

Appeal from decision of the Alaska State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease AA-48535-H.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement--Oil and Gas Leases:
Termination

Pursuant to 30 U.S.C. § 188(b) (1982), when the lessee fails to pay the required rental on or before the anniversary date of the lease, and no oil and gas is being produced on the leased premises, the lease shall automatically terminate by operation of law. The Secretary may reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982), if the full rental is paid within 20 days of the lease anniversary date, and the failure to timely pay was justifiable or not due to a lack of reasonable diligence. Mailing the rental payment after the lease anniversary date does not constitute reasonable diligence.

2. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

Late payment of annual rental may be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control at or near the anniversary date. A lessee's failure to timely pay rental is not justifiable where the lessee was merely financially unable to pay the rental when due.

3. Oil and Gas Leases: Reinstatement--Oil and Gas Leases: Termination

In order to qualify for class II reinstatement, the lessee must establish that the failure to timely pay was inadvertent. An inadvertent act involves carelessness, oversight, mistake, or the failure to pay careful and prudent attention to a situation. A lessee's failure to timely pay rental is not inadvertent where the

lessee was merely financially unable to pay the rental when due.

APPEARANCES: Dena F. Collins, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Dena F. Collins appeals from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated June 5, 1984, denying her petition for reinstatement of oil and gas lease AA-48535-H. The original lease (AA-48535) covering 3,840 acres was issued to Alaska Federal Petroleum Corporation (Alaska Federal), effective on April 1, 1983. On June 24, 1983, Alaska Federal assigned 320 acres of the lease to appellant, and BLM approved the partial assignment effective July 1, 1983.

On April 25, 1984, BLM forwarded appellant an oil and gas lease termination notice stating that lease AA-48535-H terminated on the anniversary date of the lease, April 1, 1984, for failure to pay the rental in a timely manner. BLM also informed appellant of her right to petition for reinstatement of the lease pursuant to 30 U.S.C. § 188(c) (1982) (class I reinstatement) and pursuant to 30 U.S.C. § 188(d) (1982) (class II reinstatement). BLM's lease termination notice set forth the conditions for reinstatement under both class I and class II. 1/

1/ BLM outlined the conditions for reinstatement as follows:

"I. Class I (30 U.S.C. 188(c); 43 CFR 3108.2-1(c) [1983]

"Your lease may be reinstated under these provisions only if: (1) the rental due is paid or tendered to this office within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence, (2) that a petition for reinstatement, together with a nonrefundable filing fee of \$ 25 and the required rental, is filed in this office within 15 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease. If these conditions are met, your lease will be reinstated with the original lease terms and conditions, effective on the date of the termination. If one or more of the above conditions are not met, your lease may be eligible for a Class II reinstatement. However, to qualify for a Class II reinstatement, the following conditions must be met.

"Class II (30 U.S.C. 188(d) and (e); P.L. 97-451, Sec. 401(d)

"Your lease may be reinstated under these provisions only if: (1)(a) the rental is paid within 20 days after the anniversary date of the lease, and it is shown to the satisfaction of the authorized officer that failure to pay on the anniversary date was due to inadvertence, or, (b) if the rental is not paid within 20 days after the anniversary date, it is shown to the satisfaction of the authorized officer that failure to pay was either justifiable or not due to a lack of reasonable diligence or due to inadvertence, (2) that a petition for reinstatement, together with a nonrefundable filing fee of \$ 25 and the rental and royalty due from the date of termination to the date of petition and payable at the rates set out below, is filed in this office within 60 days after receipt of this Notice, and (3) that a new oil and gas lease has not been issued for any of the lands included in the terminated lease.

"If these conditions are met, you will have to meet certain other requirements for reinstatement as follows:

On May 17, 1984, appellant filed a petition for reinstatement stating only that she had mailed payment on April 6, 1984, and it had been received on April 9, 1984. In its decision, BLM first considered appellant's petition for reinstatement under class I. BLM cited 43 CFR 3108.2-1(a) which provides that a lease shall automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date. BLM, citing Louis Samuel, 8 IBLA 268 (1972), found that an applicant for a class I reinstatement must show that the failure to timely pay the rental was either justifiable or not due to a lack of reasonable diligence. BLM concluded that appellant's petition for reinstatement did not show reasonable diligence in mailing the payment or a justifiable reason for the delay in payment. Consequently, BLM denied appellant's petition for class I reinstatement.

In its decision, BLM also determined that appellant's failure to timely pay was inadvertent. BLM stated that the lease could be reinstated under class II, provided certain conditions were met. BLM then detailed the conditions for reinstatement under class II, and specifically set forth the amount of required back rental, administrative costs, and cost of publishing a notice of proposed reinstatement in the Federal Register. BLM notified appellant that she had 60 days from the date she had received the termination notice within which to meet the stated conditions.

In her statement of reasons for appeal, appellant seeks reinstatement under class I because that "is all [she] can afford." She asserts several business, financial, and personal reasons for the untimely payment. Those reasons include problems with her restaurant business and ensuing financial difficulties, misappropriation of certain funds by a stockbroker, the confinement of her mother to bedrest due to pneumonia from April 9 to 19, 1984, and child support problems. She stated that after she had paid certain taxes, she "needed the extra 5 days to obtain the \$320."

[1] Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that when the lessee fails to pay rentals on or before the anniversary date of the lease, and where no oil or gas in paying quantities is being produced on the leased premises, the lease shall automatically terminate by operation of law. If the lessee has paid the full rental within 20 days after the lease anniversary date, and the lessee shows that the

fn. 1 (continued)

"1. You will be required to pay a reinstatement processing fee of \$ 500 or as provided in regulations in effect at the time the petition is submitted, as well as the cost of publishing a Notice of Proposed Reinstatement in the Federal Register, and,

"2. You must agree to new lease rental and royalty terms:

"(a) For reinstated noncompetitive leases, rental shall be \$5.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of 16-2/3 percent.

"(b) for reinstated competitive leases, rental shall be \$10.00 per acre or fraction thereof per year, and royalty shall be payable at a rate of 16-2/3 percent, computed on a sliding scale 4 percentage points greater than the competitive royalty schedule attached to the lease.

"If all these requirements are met, your lease may be reinstated with the amended terms and conditions, effective on the date of termination." (Emphasis added.)

failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence, the Department may, under certain circumstances, reinstate the lease, pursuant to 30 U.S.C. § 188(c) (1982) and 43 CFR 3108.2-2(a). Jerry D. Powers, 85 IBLA 116, 118 (1985) and cases cited therein.

It is well established that mailing a rental payment after the lease anniversary date does not constitute reasonable diligence. James P. Felt, 84 IBLA 205, 207 (1984); Leo M. Krenzler, 82 IBLA 205, 209 (1984) ("mailing the payment 1 day after it is due does not constitute reasonable diligence." Id.) Reasonable diligence normally requires mailing the payment sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of mail. Leo M. Krenzler, supra at 209; Anthony F. Hovey, 79 IBLA 148, 149 (1984). In the instant case, the rental was due on April 1, 1984. Appellant did not mail the rental payment until April 6, 1984. Thus, appellant's untimely submission did not constitute reasonable diligence.

[2] Late payment of an annual rental may be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control at or near the anniversary date. Larry M. Ferguson, 81 IBLA 167, 169 (1984); William F. Branscome, 81 IBLA 235, 237 (1984). Essentially, appellant's asserted justification for the late payment is that she was financially unable to pay the annual rental when due. While unfortunate, this is not justifiable. This board has specifically held that inability to pay is not a justifiable reason for failing to make timely payment. Anthony Theophilus, 21 IBLA 287, 288 (1975); Louis Samuel, supra at 274. 2/

BLM properly denied appellant's petition to reinstate the lease under class I because appellant failed to prove that her failure to timely pay the rental was justifiable or not due to a lack of reasonable diligence. See 43 CFR 3108.2-2(b).

[3] BLM also considered appellant's petition for reinstatement pursuant to class II. As stated in the notice of termination, class II reinstatement is available where the rental is paid within 20 days after the anniversary date of the lease and it is shown to the satisfaction of the authorized officer that the failure to pay the rental on or before the anniversary date was inadvertent. Appellant tendered the rental within 20 days after the anniversary date, and BLM found that appellant's "failure to pay the rent on time was inadvertent."

2/ To the extent appellant is relying on the totality of her business, personal, and financial problems as justification for late payment, this Board has repeatedly held that neither the bulk nor the complexity of a lessee's business affairs constitutes adequate justification for a late payment. See Leo M. Krenzler, supra; Larry M. Ferguson, supra; Crest Oil & Gas Corp., 72 IBLA 370 (1983). "A late payment will not be considered justified where a lessee neglects to order his business affairs in such a fashion that outstanding obligations, including the rental payment involved herein, are met." Larry M. Ferguson, supra at 169. We note also that the hospitalization of appellant's mother did not occur until after the anniversary date of the lease and after the lease payment was sent. Although we sympathize with appellant's plight, her circumstances do not justify late payment.

Inadvertent means inattentive, careless, or heedless. Phillips Petroleum Co. v. Curtis, 85 F. Supp. 399, 401 (Okla. 1949) (termination of an oil and gas lease); Tyler v. Cowen Construction, Inc., 532 P.2d 1276, 1281 (Kan. Sup. Ct. 1975). Inadvertence involves oversight or mistake. Government Employees Insurance Co. v. Herring, 477 P.2d 903, 906 (Or. Sup. Ct. 1970). An inadvertent act involves the failure to pay careful and prudent attention to a situation. See Black's Law Dictionary 903 (4th ed. 1968). Appellant's business, financial, and personal problems did not involve carelessness, oversight, or the failure to pay careful and prudent attention to the rental due date. In fact, appellant knew the rent was due. She needed the extra time after the anniversary date "to obtain the \$ 320" rental payment. Thus, appellant's problems were not due to inadvertence, rather she simply was unable to pay the rental on the anniversary date. Therefore, we modify BLM's decision to the extent that it found appellant's failure to timely pay the rental inadvertent.

BLM properly denied appellant's class I petition for reinstatement, but it erred in offering appellant class II reinstatement on the basis that her failure to pay was inadvertent.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge.

